

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GILROY UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014030731

ORDER FOLLOWING PREHEARING
CONFERENCE

On October 2, 2014, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. OAH's Americans with Disabilities Act coordinator, Phoenix Vigil, was present for part of the PHC. Mother appeared on behalf of Student. Leah Smith, Attorney at Law, appeared on behalf of Gilroy Unified School District (District). The PHC was recorded.

On September 30, 2014, Mother submitted a request to continue the case because she needed to retain legal counsel. During the PHC, Mother also stated that she required special accommodations which was another ground for continuing the hearing. The PHC was recessed, and Mother was then contacted by Ms. Vigil, and the PHC resumed when Mother and Ms. Vigil had concluded their confidential discussion.

District did not directly oppose the request for continuance, but pointed out that the request for due process hearing had been filed in March 2014, and this was the third request for continuance.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have

stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Student was represented by counsel when the request for due process was filed on March 17, 2014. A joint request for continuance filed by the parties was granted on April 30, 2014. On July 25, 2014, the attorney for Student filed a notice of withdrawal of counsel. A second continuance was granted on August 1, 2014, so that Student could retain new legal counsel. On September 18, 2014, another attorney filed a notice of representation on behalf of Student. However, that attorney withdrew from representation of Student on September 30. During her confidential conversation with the ADA coordinator, Mother represented that she had spoken to an attorney, and will be retaining that attorney, but that attorney requires a continuance of the hearing date of October 14, 2014.

The ALJ considered the request and considered all relevant facts and circumstances. The request is:

☒ Granted. All dates are vacated. However, further continuances will not be granted without a substantial showing of good cause.¹

Prehearing Conference:	December 5, 2014, at 10:00 a.m.
Due Process Hearing:	December 16, 2014, at 9:30 p.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

IT IS SO ORDERED.

DATE: October 6, 2014

/s/
REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

¹The parties agreed to the dates chosen for the PHC and the due process hearing.